

**Power Partners, Docket Nos. QF95-76-000 through QF95-115-000**

[61,881]

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**Power Partners, Docket Nos. QF95-76-000 through QF95-115-000**

**Order Denying Petition for Reconsideration**

[61,882]

**(Issued August 22, 1995)**

**Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.**

On August 16, 1995, Power Partners, a Delaware general partnership, filed a petition for reconsideration of the General Counsel's denial of its request for privileged treatment for forty Notices of Self-Certification. As explained below, we will deny Power Partners' petition and order that the documents at issue be released.

**I. Power Partners' Petition**

On December 27, 1994, Power Partners, a Delaware general partnership, filed forty Notices of Self-Certification of Small Power Production Facility (Notices). The Commission assigned to these filings Docket Nos. QF95-76-000 through QF95-115-000. Power Partners requested privileged treatment of the Notices (Requests) pursuant to 18 C.F.R. §388.112. As the result of a request for copies of the filings under the Freedom of Information Act (FOIA), 5 U.S.C. §552 (1988), and a subsequent administrative appeal, the Commission, acting through its designee, the General Counsel, denied Power Partners' request for privileged treatment.

By letters dated August 2, 1995, the General Counsel informed Power Partners and the FOIA requester that the documents would be released after August 17, 1995. Relying on the Commission's authority to release information as necessary to carry out its jurisdictional responsibilities, the General Counsel determined that the type of information contained in the Notices needs early disclosure to the public to enable electric utilities and state regulatory authorities to plan the development of power resources and transmission facilities. The policy was confirmed by the Commission's revision of 18 C.F.R. §292.207(a)(1)(ii) (1995), which now explicitly requires the disclosure of the information to these entities.

On August 16, 1995, Power Partners filed a Petition with the Commission requesting reconsideration of the General Counsel's decision, and seeking a stay of the release of the Notices and Requests pending review.<sup>1</sup> Power Partners explains that when the Notices were filed, December 27, 1994, the Commission's regulations did not require concurrent service of Notices on affected electric utilities and State regulatory authorities; that requirement became effective on February 24, 1995. Power Partners now proposes to serve copies of the Notices on a confidential basis to these entities to satisfy the policy objectives cited in the General Counsel's decision, while protecting its stated need for confidential treatment of the information to protect against competitive harm.

**II. Discussion**

Power Partners filed its Notices of Self-Certification pursuant to 18 C.F.R. §292.207(a)(2) (1994), to obtain the rate benefits and relaxed regulatory requirements of a qualifying facility. To receive these benefits, petitioner was required to provide certain information to the Commission. *See* 18 C.F.R. §292.207(b)(2)(i) through (iv).

The regulations applicable to petitioner at the time of filing the Notices did not expressly require disclosure of the submitted information to other entities, but such a requirement was implicit in the notice regulations. In 1995, the Commission revised the qualifying facility regulations and added the explicit requirement that qualifying facilities must concurrently serve copies of Notices of Self-Certification on each affected electric utility and state regulatory authority. 18 C.F.R. §292.207(a)(1)(ii) (1995). This revision explicitly confirmed an underlying purpose of the notice requirements: to provide as much notice of new projects

as possible to electric utilities with which qualifying facilities interact--and to the state regulators of those utilities and facilities--to permit the orderly development of power resources and planning for any necessary transmission facilities. *See* Preamble to Order No. 575 [*FERC Statutes and Regulations* ¶31,014], 60 Fed. Reg. 4831, 4840 (1995).

Power Partners' proposed compromise to provide the required information to utilities and state agencies on a confidential basis is not an acceptable solution. Allowing submitters to impose confidentiality conditions on utilities and state agencies would restrict the usefulness of the data, and would be administratively burdensome for the recipient utilities and agencies. Because public policy favors the dissemination of these data to all interested persons, the Commission must reject this condition.

*The Commission orders:*

(A) The petition is denied.

(B) Power Partners' Notices of Self-Certification and the accompanying Requests for Privileged

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Treatment will be released August 28, 1995.

**-- Footnote --**

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<sup>1</sup> Because the documents have not been released prior to issuance of this Order, it is not necessary to grant the stay request.